

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA**

STATE OF OKLAHOMA, ex rel.
W. A. DREW EDMONDSON, in his capacity as
ATTORNEY GENERAL OF THE STATE OF
OKLAHOMA and OKLAHOMA SECRETARY
OF THE ENVIRONMENT J. D. STRONG,
in his capacity as the TRUSTEE FOR NATURAL
RESOURCES FOR THE STATE OF OKLAHOMA,

Plaintiffs

vs.

TYSON FOODS, INC., TYSON POULTRY, INC.,
TYSON CHICKEN, INC., COBB-VANTRESS, INC.,
AVIAGEN, INC., CAL-MAINE FOODS, INC.,
CAL-MAINE FARMS, INC., CARGILL, INC.,
CARGILL TURKEY PRODUCTION, LLC,
GEORGE'S, INC., GEORGE'S FARMS, INC.,
PETERSON FARMS, INC., SIMMONS FOODS, INC.,
and WILLOW BROOK FOODS, INC.,

Defendants

) 05-CV-0329 GKF-PJC

)

**CAL-MAINE FOODS, INC.'S AND CAL-MAINE FARMS, INC.'S OPPOSITION TO
PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT (Dkt. No. 2062)**

Cal-Maine Foods, Inc. and Cal-Maine Farms, Inc. (individually and collectively "Cal-Maine")

Respond to Plaintiffs' Motion for Partial Summary Judgment (Dkt. No. 2062) as follows:

I. Opposition to Plaintiffs' Motion for Partial Summary Judgment

Cal-Maine opposes *Plaintiffs' Motion for Partial Summary Judgment* (Dkt. #2062) and respectfully requests the Court deny Plaintiffs' Motion in its entirety. To avoid repetition of legal and factual positions, Cal-Maine hereby adopts and incorporates in their entirety the arguments and facts set forth in the submissions opposing Plaintiffs' Motion filed by the Tyson Defendants (to which Cal-Maine will file a separate joinder) instead of duplicating those arguments and factual disputes herein.

Also, and to the extent applicable, Cal-Maine hereby adopts and incorporates the arguments and facts set forth in the submissions opposing Plaintiffs' Motion filed by separate defendants George's, Inc. and George's Farms, Inc., Cargill, Inc., Cargill Turkey Production, LLC, Peterson Farms, Inc., and Simmons Foods, Inc.

To be entitled to partial summary judgment, Plaintiffs must demonstrate to the Court that "there is no genuine issue as to any material fact and that [they are] entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c). Plaintiffs have not, and cannot, satisfy this standard based on the evidence developed in this case. In particular, Plaintiffs have the burden to establish a triable issue of causation with regard to Cal-Maine (and other defendants), specifically linking Cal-Maine to the injuries alleged in Plaintiffs' complaint. *See, e.g., In re Williams Sec. Litig.*, 558 F.3d 1130, 1136 (10th Cir. 2009). In their attempt to establish this link, Plaintiffs cannot rely on industry-wide or commodity-based "nonidentification" or collective liability theories to meet their burden of proof against Cal-Maine. *See Wood v. Eli Lilly & Co.*, 38 F.3d 510, 512-13 (10th Cir. 1994) (finding Oklahoma would not adopt "alternative liability" theories); *Case v. Fibreboard Corp.*, 743 P.2d 1062, 1067 (Okla. 1987) (same).

Plaintiffs' statement of alleged facts presented in their Motion reveals that Plaintiffs do not have any evidence linking Cal-Maine to their alleged injuries. Plaintiffs instead present volumes of general, argumentative statements which – while erroneously purporting to demonstrate liability – actually consist of criticisms of a vaguely-referenced "poultry industry." Indeed, in the hundreds of pages submitted to the Court in support of their Motion, Plaintiffs did not cite ant undisputed material fact that suggests, much less conclusively demonstrates for purposes of Rule 56(c), that Cal-Maine has engaged in conduct that resulted in any injury to any resource in the IRW.

For the reasons stated herein and in the oppositions herein incorporated, Cal-Maine requests the Court deny in its entirety *Plaintiffs' Motion for Partial Summary Judgment* (Dkt. #2062).

Respectfully submitted,

CAL-MAINE FOODS, INC. and
CAL-MAINE FARMS, INC.

by: s/ Robert E. Sanders
Robert E. Sanders, *pro hac vice*
E. Stephen Williams, *pro hac vice*
YoungWilliams P.A.
P.O. Box 23059
Jackson, MS 39225-3059
Telephone: (601)948-6100
Facsimile: (601)355-6136
E-Mail:
rsanders@youngwilliams.com
swilliam@youngwilliams.com

Robert P. Redemann, OBA #7454
Lawrence W. Zeringue, OBA #9996
PERRINE, McGIVERN, REDEMANN,
REID, BERRY & TAYLOR, P.L.L.C.
P.O. Box 1710
Tulsa, OK 74101-1710
Telephone: (918)382-1400
Facsimile: (918)382-1499
E-Mail: rredemann@pmrlaw.net
lzingue@pmrlaw.net

CERTIFICATE OF SERVICE

I certify that on the 5th day of June 2009, I electronically transmitted the attached document to ECF registrants via the Court's ECF system:

W. A. Drew Edmondson, Attorney General	drew_edmondson@oag.state.ok.us
Kelly Hunter Burch, Assistant Attorney General	kelly_burch@oag.state.ok.us
J. Trevor Hammons, Assistant Attorney General	trevor_hammons@oag.state.ok.us
Douglas Allen Wilson	doug_wilson@riggsabney.com,
Melvin David Riggs	driggs@riggsabney.com
Richard T. Garren	rgarren@riggsabney.com
Sharon K. Weaver	sweaver@riggsabney.com
Riggs Abney Neal Turpen Orbison & Lewis	
Robert Allen Nance	rnance@riggsabney.com
Dorothy Sharon Gentry	sgentry@riggsabney.com
Riggs Abney	
J. Randall Miller	rmiller@mkblaw.net
David P. Page	dpage@mkblaw.net
Louis W. Bullock	lbullock@mkblaw.net
Miller Keffer & Bullock	
Elizabeth C. Ward	lward@motleyrice.com
Frederick C. Baker	fbaker@motleyrice.com
Motley Rice	
COUNSEL FOR PLAINTIFFS	
Stephen L. Jantzen	sjantzen@ryanwhaley.com
Patrick M. Ryan	pryan@ryanwhaley.com
Paula M. Buchwald	pbuchwald@ryanwhaley.com
Ryan, Whaley & Coldiron, P.C.	
Mark D. Hopson	mhopson@sidley.com
Jay Thomas Jorgensen	jjorgensen@sidley.com
Timothy K. Webster	twebster@sidley.com
Sidley Austin LLP	
Robert W. George	robert.george@tyson.com
COUNSEL FOR TYSON FOODS, INC., TYSON POULTRY, INC., TYSON CHICKEN, INC.; AND COBB-VANTRESS, INC.	

George W. Owens
Randall E. Rose
The Owens Law Firm, P.C.

gwo@owenslawfirmnpc.com
rer@owenslawfirmnpc.com

James M. Graves
Gary V. Weeks
Bassett Law Firm

jgraves@bassettlawfirm.com

COUNSEL FOR GEORGE'S INC. AND GEORGE'S FARMS, INC.

John R. Elrod
Vicki Bronson
Bruce Freeman
Conner & Winters, P.C.

jelrod@cwlaw.com
vbronson@cwlaw.com
bfreeman@cwlaw.com

COUNSEL FOR SIMMONS FOODS, INC.

John H. Tucker
Colin H. Tucker
Theresa Noble Hill
Rhodes, Hieronymus, Jones, Tucker & Gable

jtuckercourts@rhodesokla.com
chtucker@rhodesokla.com
thillcourts@rhodesokla.com

Terry W. West
The West Law Firm

terry@thewesetlawfirm.com

Delmar R. Ehrich
Bruce Jones
Krisann Kleibacker Lee
Faegre & Benson LLP

dehrich@faegre.com
bjones@faegre.com
kklee@baegre.com

COUNSEL FOR CARGILL, INC. AND CARGILL TURKEY PRODUCTION, LLC

So Certified, this 5th day of June, 2009.

s/ Robert E. Sanders
YoungWilliams P.A.
P.O. Box 23059
Jackson, MS 39225-3059